

INTERMEDIATE LEVEL DUTY TO ASSIST (DTA) LESSON PLAN

PREREQUISITE TRAINING	Prior to this training, the trainees must have at least 6 months of Veteran Service Representative (VSR) experience.
PURPOSE OF LESSON <i>Trainee handout pg 1</i> <i>Slide 2</i>	<p>The purpose of this lesson is to look in depth at VA's duty to assist as it pertains to identifying all issues and developing for all records. This lesson will consist of practical applications that will allow trainees to apply their acquired knowledge to complex scenarios and situations similar to those which have received numerous national STAR quality errors. In order for the lesson to be effective, there should be very little lecture but extensive discussion and practical application.</p> <p>Given access to manual and regulation references, and appropriately screened claims, at the end of this lesson, the trainee should be able to:</p> <ul style="list-style-type: none"> • Identify a substantially complete application, and the actions to take when a claim is not substantially complete • Identify all the issues in a claim and ensure all issues have been addressed throughout the claims process • Review a claim to identify the records (Federal and non-Federal) that must be requested and the steps required to obtain these records, as part of VA's duty to assist • Identify when an examination is necessary for pension cases where a permanent and total determination is necessary. • Identifying when to send final notification letters due to inability to obtain Federal records
TIME REQUIRED	4 hours
INSTRUCTIONAL METHOD	Participatory discussion and practical application
MATERIALS/ TRAINING AIDS	<p>Classroom or private area where a discussion may be held. Chairs and writing surfaces are required.</p> <p>Large writing surface such as—easel pad, chalkboard, dry erase board, overhead projector, etc., with appropriate markers, or computer with projection equipment and PowerPoint software.</p>

	<ul style="list-style-type: none"> • <i>Intermediate DTA PowerPoint presentation</i> • <i>Intermediate DTA Trainee Handouts</i> • Sample claim that is a part of this training (found in the VBA Learning Catalog, you do not need to print/copy the instruction pages for the claim)
INSTRUCTOR PREPARATION	<p>Instructors should either have trainees print (from the website) and bring the Intermediate DTA trainee handouts to class or have enough trainee handouts available for the trainees.</p> <p>Trainees will be working in small groups of three to four people to complete the sample claim.</p>
INTRODUCTION	<p>Introduce yourself and inform participants of the lesson topic.</p> <p>The purpose of this lesson is to provide assistance in understanding the full scope of VA's duty to assist requirements.</p>
MOTIVATION	<p>Inform the trainees about an incident where failure to extend our duty to assist meant we failed to provide the required service to a Veteran.</p>

SUBSTANTIALLY COMPLETE APPLICATIONS

TOPIC OBJECTIVES <i>Slide 4</i>	<p>The trainee should be able to:</p> <ul style="list-style-type: none"> • Identify the criteria for a substantially complete application • Determine the action to take when a claim is not substantially complete
TIME REQUIRED	0.5 hours
REFERENCES <i>Slide 5</i>	<ul style="list-style-type: none"> • 38 CFR 3.151 • 38 CFR 3.159 (a)(3) • 38 CFR 3.160(a) • M21-1 I.1.A.3.f • M21-1 I.1.A.1.b • M21-1 I.1.B.1.g • M21-1 III.ii.2.B.1.d

<p>TEACHING POINTS</p>	<p>A claim must meet certain criteria before we can extend our duty to assist to the claimant.</p> <p>Discuss these criteria with the class, and what actions to take if a claim is not substantially complete.</p>
<p><i>Substantially Complete Application</i> Slide 6 Handout pg 4 38 CFR 3.159 (a)(3), 38 CFR 3.160(a) and M21-1 I.1.A.3.f</p>	<p>Review the definition of a substantially complete application with the class. Discuss different scenarios that would or would not constitute a substantially complete application.</p> <p>A <i>substantially complete application</i> means an application containing</p> <ul style="list-style-type: none"> • the claimant's name • his or her relationship to the Veteran, if applicable • sufficient service information for VA to verify the claimed service, if applicable • the benefit claimed and any medical condition(s) on which it is based • the claimant's signature, and • a statement of income in claims for Veterans Pension or Survivors Pension and Parents' DIC.
<p><i>Is it Compensation, Pension, or Both?</i> Slide 7 Handout pg 5 M21-1 III.ii.2.B.1.d and 38 CFR 3.151</p>	<p>Focus on the concept that a Veteran's claim for compensation may also be considered a claim for pension; and a Veteran's claim for pension may also be considered a claim for compensation.</p> <p>Discuss how to determine if a claim for pension has been received. Explain that a VA Form 21-526 could represent a claim for compensation, a claim for pension, or a claim for both depending on which boxes the claimant fills out and what type of relationship (or lack thereof) regarding their service and their illness, disease or injury.</p> <p>Provide some scenarios to discuss with the class.</p>
<p><i>Scenario #1</i> Handout pg 6</p>	<p>A service connected Veteran files a claim indicating he wishes to file for aid and attendance. He also provides income information in his claim.</p> <p>Is this a claim for Special Monthly Compensation (SMC) or Special Monthly Pension (SMP)? Why or why not?</p> <p>Answer: According to M21-1 III.ii.2.B.1.d, this is a claim for both. The Veteran completed all or a portion of both part II (nature and history of service-related disability) and part VIII (income information) and he did not specifically indicate that the claim was for aid and</p>

	<p>attendance due to his service connected conditions.</p> <p>Note: A VSR may use the phone to attempt to clarify the issue further, and document their conversation with the Veteran in the eFolder. However, if the Veteran cannot be reached over the phone, we must consider it a claim for both SMC and SMP.</p>
<p>Scenario #2 Handout pg 6 M21-1 I.1.A.3.b and M21-1 V.i.2.1.b</p>	<p>A Veteran files a claim indicating she is filing for compensation on part I, question 1 of the application, and provides all the needed information regarding the compensation claim. She also provides income information, which exceeds the maximum annual pension rate, and states that she had no unreimbursed medical expenses. Is this a claim for pension?</p> <p>Answer: Once again, according to M21-1 III.ii.2.B.1.d, this is a claim for compensation and pension. The Veteran completed all of part II (nature and history of service-related disability) and parts VIII (income information) and X (medical, legal, or other expenses).</p> <p>Follow-up question: What development action should we take regarding the <i>pension</i> claim?</p> <p>Answer: None. We should NOT send the Section 5103 Notice (formerly VCAA Letter) for the pension claim, and should deny the pension claim administratively due to excessive income, since the applicant does not meet the basic eligibility requirements (Per M21-1 I.1.A.3.b) when we send notification of our decision(s).</p>
<p>What to do with Incomplete Applications Scenario #3 Slide 8 Handout pg 7 M21-1 I.1.A.1.b and M21-1 I.1.B.1.g</p>	<p>Review the actions to take when a claim received is not substantially complete. Provide scenarios to discuss. One scenario has been provided below:</p> <p>A Veteran indicates he is filing a claim for service connection for a lower back condition and pension, but fails to provide any income information.</p> <p><i>What would we do?</i></p> <p>Send the veteran a Section 5103 Notice for the lower back condition, and consider the pension claim <i>incomplete</i>. Follow the instructions in M21-1 I.1.B.1.g for an incomplete application, such as contacting the Veteran by telephone and requesting clarification and additional information regarding the pension claim, or sending the Veteran a letter indicating which pieces of information are missing.</p>

	Emphasize the need to inform the claimant in the letter regarding the pension issue that no further action would be taken until the requested information is received. Discuss the impact of not including this statement, such as the Veteran would be expecting a determination regarding this issue, and a possible STAR error for failing to address this issue later.
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IDENTIFYING ISSUES AND DEVELOPMENT ACTIONS

OBJECTIVES <i>Slide 10</i>	<p>The trainee should be able to:</p> <ul style="list-style-type: none"> • Identify all the issues in a claim that must be addressed • Ensure all issues have been addressed throughout the claims process
TIME REQUIRED	0.75 hours
REFERENCES <i>Slide 11</i>	<ul style="list-style-type: none"> • 38 CFR 3.159(b) • M21-1 I.1.B • M21-1 III.ii.1.A.2
TEACHING POINTS	<p>Often, cases are complex or the claimant may be vague about what he/she wishes to claim. We should be liberal in our interpretation of the benefits being claimed.</p> <p>VSRs must also be mindful that all issues are addressed at all stages of the development process.</p>
<i>Issues Claimed</i> <i>Slide 12-13</i>	<p>Because claimants do not always claim an issue explicitly, it is our duty as VSRs to determine what issues the claimant is attempting to claim, and contact the claimant or their representative for clarification, if needed.</p> <p>If you cannot receive clarification, you should always consider what would be most beneficial to the claimant when determining the issues that are being claimed.</p> <p>Once you determine what the issues are, you must ensure that all the issues are addressed. Some issues may require a rating, while others may need an administrative denial or grant (such as pension), while still others will have no further action taken until clarification is received (such as a claim for exposure).</p>

	<p>Whatever the case may be, each issue must be addressed and the claimant must be notified of what, if any actions they need to take, how much time they have to submit the requested information, and what, if anything, we will do.</p>
<p>Review cases (optional)</p>	<p>Discuss quality errors with the class, due to issues not being addressed.</p> <p>Provide examples of claims that are complex, have multiple actions needed, and discuss the development actions that would be needed.</p>
<p>Sample Claims Exercise Slide 14 Handout pg 8</p>	<p>Have the class break into groups of three or four and give each group the sample claim from the VBA Learning Catalog. Have each group complete the “DTA Claims Review Questions” exercise.</p> <p>Once everyone has completed the questions, discuss the answers as a class.</p>
<p>Claim review and missed issues Slide 15</p>	<p>Often, issues will “fall through the crack” and we fail to address them.</p> <p>Discuss our responsibility to review the case at each stage of the development process to ensure this does not happen. Discuss the various stages in the development process, and what that review should consist of. Utilize the sample claim in the review exercise as an example of how easily an issue could be missed.</p> <p>Emphasize the importance of reviewing the entire file when taking action on a claim, not just the item that currently requires action.</p>
<p>Initial Review Slide 15</p>	<p>When a claim is first received, it is the VSR’s responsibility to carefully review the claim and identify all issues being claimed.</p> <ul style="list-style-type: none"> • If an administrative grant/denial of an item (such as pension) is in order, ensure it is done, and you may wish to flash the file during initial development, so that it is not missed in the claims process. This will ensure that when the notification letter is sent, the VSR remembers to address the administrative issue (such as pension). • All issues that require a Section 5103 Notice need to have a regulation compliant Section 5103 Notice sent. <p>Briefly, discuss law changes and focus on station specific errors that may need emphasis.</p>

<p><i>Follow-up Review</i> <i>Slide 15</i></p>	<p>When a claim is pulled for follow-up action, the VSR should not only review what actions require follow-up but also ensure that all prior development actions needed were completed, to include a Section 5103 Notice for all issues and third party information requests. <i>Always review prior development, even when just doing follow up reviews.</i></p>
<p><i>Processing a rating</i> <i>Slide 15</i></p>	<p>When processing the rating, always review the rest of the file to ensure we have met our duty to assist requirements.</p> <p><i>Ask the class:</i> What should be reviewed to ensure all issues were properly developed? Write the trainees responses on a whiteboard or flipchart for further discussion.</p>

REQUESTING RECORDS

<p>OBJECTIVES <i>Slide 17</i></p>	<p>The trainee should be able to:</p> <ul style="list-style-type: none"> • Identify Federal and non-Federal records needed in a claim • Identify the steps required to obtain these records
<p>TIME REQUIRED</p>	<p>1.5 hours</p>
<p>REFERENCES <i>Slide 18</i></p>	<ul style="list-style-type: none"> • 38 CFR 3.159 • M21-1 I.1.C • M21-1 III.iii.1.C • M21-1 III.iii.1.D.1.d • M21-1 III.iii.2.B • M21-1 III.iii.3.A.2 • M21-1 III.iii.1.A.1.b
<p>TEACHING POINTS</p>	<p>The law directs the VA to make every attempt to obtain records in the custody of a Federal department or agency, and to make reasonable efforts to obtain relevant records for a claim that are not in the custody of a Federal department or agency.</p> <p>Often it is difficult, if not impossible, to tell if a record is relevant to a claim until the record is received. Nevertheless, if it is determined that a record is irrelevant, VSRs are not required to retrieve it.</p>

<p><i>Ask the class</i> <i>Slide 19</i></p>	<p>Since it is often difficult, if not impossible, to tell if a record is relevant to a claim until the record is received, what should we assume when a claimant makes us aware of a record in support of their claim?</p> <p><i>Answer:</i> If a claimant makes us aware of a record in support of his/her claim, we must attempt to obtain this record unless we can determine that it is irrelevant.</p>
<p><i>Requesting Private records and Review of the Term “Reasonable Efforts”</i> <i>Slide 20</i> <i>Handout pg 9</i> M21-1 I.1.C.1.a and M21-1 I.1.C.2.b</p>	<p>The law directs the VA to make reasonable efforts to obtain relevant records for a claim that are not in the custody of a Federal department or agency.</p> <p><i>Reasonable efforts</i> to obtain relevant records that are not in the custody of a Federal department or agency ordinarily require</p> <ul style="list-style-type: none"> • an initial request for such evidence (15 days), and • at least one follow-up request (15 days) if no response is received from the custodian of the records <i>unless</i> a response to the initial request indicates that <ul style="list-style-type: none"> • the records do <i>not</i> exist, or • a follow-up request would be futile.
<p><i>Discussion</i> <i>Slide 21</i> <i>Handout pg 9</i> M21-1 III.iii.1.C.1.b, step 4</p>	<p>However, even after a negative response or no response at all, VA should make additional attempts to obtain the requested evidence when there is reason to believe the records exist and subsequent requests will result in obtaining the documents.</p> <p><i>Ask the class what they think the above statement means. Ask for examples of situations where we should make additional attempts beyond the initial and follow up requests for the records.</i></p> <p>Examples include: (1) when we are made aware that the prior address we were attempting to obtain records from was incorrect and we now have the correct address, or (2) when we receive an indication from the source we requested the records from that the records were forwarded to a different location.</p>
<p><i>Review of Claimant Notification Regarding Non-Federal Records</i> <i>Slide 22</i> M21-1 I.1.C.5.a</p>	<p>At the time of the follow-up request, we must notify the claimant that:</p> <ul style="list-style-type: none"> • he/she is ultimately responsible for providing the evidence, but that a follow-up attempt is being made, • he/she must submit these requested records within one year from when VA first notified the claimant of the information and evidence necessary to substantiate the claim, and

	<ul style="list-style-type: none"> • if the requested evidence is not received, VA will process the claim based on the evidence of record.
<p>Scenario #4 Handout pg 9 M21-1 III.iii.1.D.1.d</p>	<p>A Veteran claims service connection for a foot condition. We sent the Veteran a Section 5103 Notice on March 2, 2017.</p> <p>On March 24, 2017, the Veteran submits a signed <i>VA Form 21-4142</i> and <i>4142a</i> indicating treatment by a private physician, but did not list conditions or dates of treatment. The date is now April 2, 2017. What development action should be taken on the claim?</p> <p>Answer: According to M21-1 III.iii.1.D.1.d, we should contact the claimant by telephone or, if unable to reach by phone, generate a development letter to the claimant requesting the return of a completed <i>VA Form 21-4142a</i>.</p> <p>Note: If the VSR has a signature, dates, and conditions, but not a complete address for the doctor, this can generally be found online or by calling the physician’s office.</p>
<p>Documenting Development Slide 22</p>	<p>All attempts to obtain records <i>must</i> be documented in the claims folder. Remind the class about proper documentation of this development.</p>
<p>Determining Relevance of Records Slides 23-24 M21-1 I.1.C.4</p>	<p>Tell the class that the Court of Appeals for Veterans Claims (CAVC), in Golz v. Shinseki, held that not all medical records have a reasonable possibility of helping substantiate a pending claim and that VA’s duty to assist applies only to relevant records. CAVC further stated, in Raugust v. Shinseki, that the VA has no duty to obtain records without a specific reason to believe that the records identified by the Veteran would contain necessary information to substantiate the claim.</p> <p>Because each case presents unique circumstances, relevance of records shall be determined on a case-by-case basis. It is not possible to offer “one-size fits all” guidance on the issue of determining whether an identified piece of evidence is relevant to the issue being adjudicated. However, whenever there is doubt as to the relevance of the records, resolve that doubt in favor of the claimant and obtain the records.</p> <p>Here are questions you should ask to help guide your decision-making concerning relevance:</p> <ol style="list-style-type: none"> 1. Do the records relate to the disability or injury for which the claimant is seeking benefits? 2. Do the records have a reasonable possibility of helping to substantiate the claim?

	<p>3. Can I determine relevance without review of the actual records?</p> <p>4. Can an earlier effective date be established by obtaining the identified records?</p> <p>5. Can a higher evaluation be assigned?</p> <p>Examples of circumstances where it was determined that records were not considered relevant can be found in M21-1 I.1.C.4.d.</p>
Requesting Federal Records	Just like private records, VA must attempt to obtain all Federal records that have been identified and may be relevant to a disability compensation or pension claim.
Ask the class M21-1 III.iii.1.C.1.b	<p>What are some examples of Federal records we must obtain in connection with a claim?</p> <p>Write their responses on the overhead, whiteboard or flipchart.</p> <p>Examples include: (1) Service records, (2) Social Security Administration (SSA) records, (3) Vet Centers, (4) Office of Personnel Management (OPM) records, and (5) Office of Workers' Compensation.</p>
Attempting to Obtain Federal Records <i>Slide 25</i> <i>Handout pg 10</i> M21-1 I.1.C.1.c and M21-1 III.iii.1.C.1.b	<p>VA must attempt to obtain Federal records until</p> <ul style="list-style-type: none"> • the records are obtained, or • it is reasonably certain that the records do not exist, or that further efforts by the VA to obtain records would be futile <p>VA can be reasonably certain that Federal records do not exist or further attempts to request them would be futile in cases when the minimum efforts to obtain records is complete, or a reply is received from the custodian of the records indicating:</p> <ul style="list-style-type: none"> • the requested records do not exist • the requested records are not in his/her possession • the requested records are lost, or • he/she is unable to provide the records for some other valid reason. <p>Exceptions: These procedures do not apply to service treatment records, or VAMC or VR&E records.</p>
Review of the Term "Minimum Efforts" <i>Slide 26</i>	<p>The minimum efforts to obtain records from a Federal entity are:</p> <ul style="list-style-type: none"> • Send a request for Federal records to the appropriate custodian and give them 30 days to respond, then

<p>Handout pg 10 M21-1 III.iii.1.C.1.b</p>	<ul style="list-style-type: none"> • Make a follow-up request, by phone or mail, and give 15 days for a response, then • Notify the claimant about the follow-up action VA took and ask the claimant to provide the records in his/her possession, and • Attempt to contact the records custodian by telephone. If unsuccessful, then mail another request for the records and give 10 days for a response <p>Note: If VA obtains the records at any point in this process, stop taking additional steps and decide the claim as soon as all other development actions are complete</p> <p>Important: Just like with private records, VA should make additional attempts to obtain the requested evidence when there is reason to believe the records exist and subsequent requests will result in obtaining the documents.</p>
<p>Requesting Service Treatment Records Slide 27 M21-1 III.iii.2.B.3.a-b</p>	<p>Starting January 1, 2014, the Records Management Center (RMC) started automatically sending service treatment records, along with the claims folder, to the VBMS scanning vendor automatically once a regional office establishes a corresponding claims folder in VBMS.</p> <p>Therefore, for Veterans who have a “complete separation from service” after January 1, 2014, VBMS will automatically generate a request for STRs when the Veteran’s claim is established. For Veterans who have a “complete separation from service” prior to January 1, 2014, the VSR still has to determine the appropriate records custodian and send a request for STRs.</p> <p>Note: For Coast Guard Veterans, the date this change occurred is September 1, 2014, not January 1, 2014.</p> <p>M21-1 III.iii.2.B.2.e contains a list of appropriate records custodians depending on when the service was completed</p> <p>Definition: Complete separation from service means when a Servicemember:</p> <ul style="list-style-type: none"> • retires, or • is released from active duty with no further service obligation, or • is released from active duty with a service obligation but is <ul style="list-style-type: none"> • placed in the Inactive Ready Reserve (IRR), or • <i>not</i> immediately assigned to a Reserve unit, or • completes his/her service obligation in the Reserve or National Guard

<p>Requesting Records from Alternative Sources Slide 28 M21-1 III.iii.2.B.1.d</p>	<p>Federal records, especially service records, are not always located where they are “supposed” to be. We should always try to contact the claimant to determine if he or she knows where the records are located. It is good to remember that service records might</p> <ul style="list-style-type: none"> • never have left the separation center or treating facility • be in the Veteran's possession, or • still be at a Reserve/National Guard unit, even though the Veteran’s service obligation has ended.
<p>Actions to Take if it Appears that Service Records are Incomplete Slide 28 M21-1 III.iii.2.B.2.b and c and M21-1 III.iii.2.B.3.b and i</p>	<p>What should we do when it appears only a portion of the requested information or records are received from a Service Department?</p> <p>Answer: If the Veteran separated from service after January 1, 2013, then accept the records as complete if they are accompanied by a <i>certification letter</i> or a <i>DD Form 2963, Service Treatment Record (STR) Transfer or Certification</i> unless the claimant alleges treatment at a specific military treatment facility during a specific period of time AND records referring to the treatment do not exist in the available STRs and are not accessible through the Joint Legacy Viewer (JLV).</p> <p>If the Veteran served in the Reserves or National Guard, then determine if the additional records are available in JLV or can be made available after sending a follow-up request.</p> <p>If the Veteran separated from service prior to January 1, 2013, then determine if the additional records are available in JLV or follow the procedures for following up on a service treatment records requests found in M21-1 III.iii.2.I.2.a. Specifically, review the RMC generated memo indicating what actions, if any, were taken concerning the STR request to determine whether additional service treatment records can be located.</p>
<p>Requesting Records from the VAMC Slide 29 M21-1 III.iii.1.C.2.c-f</p>	<p>VHA completed the transition to electronic recordkeeping at all VAMCs in late 2004. Treatment that occurred prior to the transition to electronic recordkeeping has been archived by VHA.</p> <p>Therefore, VSRs should always consider submitting a <i>VA Form 10-7131</i> to request archived records when treatment is alleged at a VAMC prior to 2005; or, when treatment is alleged after 2005, are not available in CAPRI or AWIV but there is reason to believe that the records should exist.</p> <p><i>VA Form 10-7131</i> can be submitted electronically through CAPRI and its status can be checked in CAPRI as well. Follow the steps in M21-1 III.iii.1.C.2.f on how to conduct follow-up of submitted requests.</p>

	<p>Note: Keep in mind that follow-up requests must be made until the records or a negative response is received.</p>
<p>Question and Answer <i>Handout pg 10</i></p>	<p>Question: If a Veteran indicates treatment from 1987, but we only have records in CAPRI going back to 1992, what should we do?</p> <p>Answer: Print the available relevant records and send an electronic 7131 request for the records regarding treatment from 1987 to the earliest date the records are available in Capri.</p> <p>Question: How many follow up requests would we need?</p> <p>Answer: As many times as it takes to get a response.</p> <p>Question: What would we do if we receive a negative response?</p> <p>Answer: Document the RO’s attempts to obtain the records and leave it to the rating specialist to add the following free text in their rating decision: “<i>We have been unable to obtain records from [insert name of VAMC] for the period [insert date range of treatment/ counseling]. We have determined that these records do not exist. We will now make a decision based on the evidence of record.</i>”</p>
<p>Requests for Medical Records from SSA <i>Slide 30</i></p> <p>M21-1 III.iii.1.C.1.d, M21-1 III.iii.3.A.2.a-b and M21-1 III.iii.3.A.2.d-e</p>	<p>Sometimes claimants ask VA to obtain medical records from the Social Security Administration (SSA) to substantiate their claim.</p> <p>VA may request copies of the medical records on which SSA based its decision upon, if there is an indication the</p> <ul style="list-style-type: none"> • claimant has filed a claim for or is receiving disability benefits from SSA, and • medical records may be pertinent to his/her claim for <ul style="list-style-type: none"> • increased disability compensation, • a 100-percent disability rating based on individual unemployability, • disability pension, or • additional benefits based on being housebound or requiring the aid and attendance of another person. <p>In order to request copies of SSA medical records, designated employees can use the SSA Government-to-Government Services Online (SSA-GSO) website. SSA-GSO is a web-based interface that allows VA employees to request and receive electronic copies of claimants’ SSA disability records through a secure, electronic messaging system.</p>

	<p>Access to SSA-GSO is limited and it is the responsibility of the Veterans Service Center or Pension Management Center management to designate employees as authorization designee and super users.</p> <p>Authorized VSRs should make an initial request through the SSA-GSO website and wait 30 days for a response. If no response is received, then the authorized VSR sends a follow-up request and waits 15 days. If there is still no response, the authorized VSR contacts the RO's SSA-GSO super user.</p>
<p>Scenario #5 Handout pg 10</p>	<p>A Veteran files a claim for an increase in her service connected back condition. She also indicates she is receiving SSA disability for her back condition. Should we request the SSA records? Why or why not?</p> <p>Answer: Yes, according to <u>M21-1 III.iii.1.C.1.d</u>, VA is required to the records because it pertains to her claim for increased disability compensation.</p>
<p>Responsibility of the Claimant Slide 31 M21-1 III.iii.1.A.1.b</p>	<p>Although VA must make a thorough and complete effort to obtain records, the ultimate responsibility for furnishing evidence needed to substantiate the claim rests with the claimant. Therefore, we must:</p> <ul style="list-style-type: none"> • inform the claimant that we are requesting records and specify what records are being requested, • ask the claimant to submit copies of records in their possession, and • inform claimant <ul style="list-style-type: none"> ○ In a follow-up request letter, <i>for private records</i>, that we will make a decision based on the evidence of record if we do not receive from our follow-up request ○ In a final notification letter (where applicable), <i>for Federal records</i>, that we were unsuccessful in our attempts to obtain Federal records

VA EXAMINATIONS IN PENSION CASES

<p>OBJECTIVES Slide 33</p>	<p>The trainee should be able to:</p> <ul style="list-style-type: none"> • Determine whether a VA examination is warranted to adjudicate the claim
<p>TIME REQUIRED</p>	<p>0.5 hours</p>

<p>REFERENCES</p> <p><i>Slide 34</i></p>	<ul style="list-style-type: none"> • 38 CFR 3.326(a) • M21-1 V.i.2.2
<p>TEACHING POINTS</p>	<p>The law directs the VA to authorize an examination in cases where the accompanying medical evidence to a claim for compensation or pension is considered inadequate for rating purposes.</p>
<p><i>When is a Rating Decision Necessary for Pension Cases?</i></p> <p><u>M21-1 V.i.2.2.a</u></p>	<p>A rating determination of permanent and total (P&T) disability is NOT required to establish eligibility for Veteran’s pension when the Veteran is</p> <ul style="list-style-type: none"> • age 65 or older, or • presumed to be P&T disabled for pension purposes because he/she is <ul style="list-style-type: none"> • a patient in a nursing home for long-term care because of disability, or • disabled, as determined by the Commissioner of SS.
<p><i>When is an Examination Necessary?</i></p> <p><i>Slide 35-36</i></p> <p><u>M21-1 V.i.2.2.e-g</u></p>	<p>If a rating determination of P&T is required because the Veteran does NOT meet the age or presumptive criteria for pension, a VA examination may be necessary if there is inadequate medical evidence available to decide to claim.</p> <p>Medical evidence, in the form of either a statement from a medical professional or a hospital or examination report, is considered adequate for rating purposes if it addresses ALL of the medical and/or mental condition(s) provided by the Veteran and it can be used to evaluate the impact that the condition(s) have on the Veteran’s employability.</p> <p>Simply put, the medical evidence must address all the conditions the Veteran states are prohibiting employment, and provide enough details about the conditions for a rater to assign an evaluation in order for it to be considered adequate. While this typically just means that there is medical evidence addressing the symptoms of each condition (and not just a list of diagnoses), if there is any doubt, you can refer the case to the rating activity.</p> <p>Keep in mind that adequate medical evidence can be submitted along with the claim, or it can already be in record from a previous claim, or it can found in VA medical records.</p> <p>Whether there is one claimed condition or multiple claimed conditions, if the medical evidence is NOT adequate because it fails to address at least one of the claimed conditions, or it fails to provide enough information to evaluate at least one of the claimed conditions, then order a VA examination.</p>

	<p>Exception: If the medical evidence is inadequate because not all of the claimed conditions can be evaluated, but there is enough medical evidence to determine that the Veteran is P&T, refer the claim to the rating activity without a VA examination.</p> <p>Use the following table to determine whether a VA examination is necessary:</p> <table border="1" data-bbox="511 493 1437 1123"> <thead> <tr> <th data-bbox="511 493 836 556">If the medical evidence</th> <th data-bbox="836 493 1112 556">And the medical evidence supports</th> <th data-bbox="1112 493 1437 556">Then ...</th> </tr> </thead> <tbody> <tr> <td data-bbox="511 556 836 703">is adequate for pension rating purposes</td> <td data-bbox="836 556 1112 703">a grant of pension benefits</td> <td data-bbox="1112 556 1437 703">grant pension by rating decision. No VA exam is required.</td> </tr> <tr> <td data-bbox="511 703 836 861">is adequate for pension rating purposes</td> <td data-bbox="836 703 1112 861">a denial of pension benefits</td> <td data-bbox="1112 703 1437 861">deny pension by rating decision. No VA exam is required.</td> </tr> <tr> <td data-bbox="511 861 836 1018">is not adequate for pension rating purposes</td> <td data-bbox="836 861 1112 1018">a grant of pension benefits</td> <td data-bbox="1112 861 1437 1018">grant pension by rating decision. No VA exam is required.</td> </tr> <tr> <td data-bbox="511 1018 836 1123">is not adequate for pension rating purposes</td> <td data-bbox="836 1018 1112 1123">a denial of pension benefits</td> <td data-bbox="1112 1018 1437 1123">request a VA exam.</td> </tr> </tbody> </table>	If the medical evidence	And the medical evidence supports	Then ...	is adequate for pension rating purposes	a grant of pension benefits	grant pension by rating decision. No VA exam is required.	is adequate for pension rating purposes	a denial of pension benefits	deny pension by rating decision. No VA exam is required.	is not adequate for pension rating purposes	a grant of pension benefits	grant pension by rating decision. No VA exam is required.	is not adequate for pension rating purposes	a denial of pension benefits	request a VA exam.
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<p><i>When to Obtain Evidence Before Referring a Claim to the Rating Activity</i></p> <p><i>Slide 37</i></p> <p><u>M21-1 V.i.2.2.h-i</u></p>	<p>If there is NO medical evidence pertaining to any of the claimed conditions impacting pension, then request medical evidence from the claimant.</p> <p>Once medical evidence becomes of record, determine whether it is adequate or not. If it is adequate, send to the rating activity. If it is not, order an examination.</p> <p>However, if the claimant does not submit any medical evidence and 30 days have passed from the date of request, then</p> <ul style="list-style-type: none"> • deny the claim, and • notify the Veteran that the evidence must be provided in order to reconsider the claim. <p>No additional development is needed and no rating decision is completed.</p>															

<p>Things to keep in mind</p> <p>M21-1 V.i.2.2.g</p>	<p>It is important to remember that, as a claims processor, you have the authority to request an examination for any claim for which special circumstances may warrant it, even if an exam is not required based on guidance in this training.</p> <p>It is also important to remember that if any question arises about whether the medical evidence is adequate, refer the claim to the rating activity.</p>
<p>Scenario #6</p> <p>Handout pg 11</p>	<p>A World War II Veteran claims pension due to coronary artery disease, chronic renal disease and diabetes mellitus. The Veteran submits private medical records that show cardiac hypertrophy with an ejection fraction of 55 percent and METs of 7. Using CAPRI, we also discover VA medical records that show that he is on a restricted diet and taking insulin, but no regulation of activities. Service treatment records do not show treatment for any of these conditions. If you are developing this case today, what action should you take?</p> <p>Answer: A VA general medical examination is warranted since there is medical evidence of record, but it is not adequate for pension purposes. The evidence shows that we can evaluate coronary artery disease (CAD) and diabetes mellitus (DM), but not chronic renal disease. In addition, the evaluations for CAD and DM are not enough to consider the veteran permanently and totally disabled according to 38 CFR 4.16.</p>

MILITARY RECORDS SPECIALIST AND FINAL NOTICE TO CLAIMANTS

<p>OBJECTIVES</p> <p><i>Slide 39</i></p>	<p>The trainee will:</p> <ul style="list-style-type: none"> • Review a claim and identify if the correct development was undertaken to obtain Federal records in support of a claim • Prepare a final notice of claimant due to unavailability of federal records
<p>TIME REQUIRED</p>	<p>0.75 hours</p>
<p>REFERENCES</p> <p><i>Slide 40</i></p>	<ul style="list-style-type: none"> • M21-1 III.iii.1.C.1 • M21-1 III.iii.2.E • M21-1 III.iii.2.B • M21-1 III.iii.2.I • M21-1 III.iii.3.A.2.e

<p>TEACHING POINTS</p>	<p>Whenever Federal records cannot be obtained, final notification to the claimant that VA is unable to obtain records will need to be sent.</p>
<p><i>Final Notification Letter for Federal Records (general)</i></p> <p><i>Slide 41</i></p> <p><i>Handout pg 12</i></p> <p>M21-1 III.iii.1.C.1.e</p>	<p>Tell the class that sometimes, you just cannot retrieve records. Even from Federal entities. In lieu of formal finding of record unavailability, regional offices have a new procedure:</p> <p>If efforts to obtain records from a Federal entity are ultimately unsuccessful, regional offices (ROs) must</p> <ul style="list-style-type: none"> • prepare a final notification letter using the Letter Creator tool, or prepare an equivalent notice using PCGL, and • send the letter to the claimant <p>Note: As of October 27, 2017, the final notification letter NO LONGER gives the Veteran 10 days to submit the records that VA could not obtain.</p> <p>Important: All claims processors can prepare final notification letters for any type of Federal record.</p> <p>Exceptions: This guidance does not apply to attempts to obtain service treatment records, VAMC or VR&E records, or fire-related records.</p>
<p><i>Final Notification Letter for Federal Records (Service Treatment Records)</i></p> <p><i>Slide 42</i></p> <p><i>Handout pg 12</i></p> <p>M21-1 III.iii.2.B.3.i</p>	<p>If the federal records are <i>service treatment records (STRs)</i>, regional offices must first attempt to locate the records in Joint Legacy Viewer (JLV) before sending the final notification letter.</p> <p>Note: JLV is a web-based viewer that delivers real time access to DoD and VA electronic health information to RO personnel. Records that are viewable in JLV include</p> <ul style="list-style-type: none"> • copies of paper STRs that have been scanned into HAIMS • in-service treatment records stored in AHLTA (part of the certified and complete STRs), and • post-service treatment at a military treatment facility. <p>VA employees must check JLV for the availability of these in-service treatment records anytime</p> <ul style="list-style-type: none"> • they are unable to obtain a complete set of a Veteran’s STRs through the other means described in this section, or • the available STRs do not show the event, injury, or disease.

<p>Action to Take When Unable to Retrieve Federal Records (VAMC or VR&E Records) Slide 42 Handout pg 12 M21-1 III.iii.1.C.2.l</p>	<p>If the federal records are VAMC or VR&E records, the rating specialist must free text the following into the evidence section of the rating decision:</p> <p><i>We have been unable to obtain records from [insert name of VAMC/VR&E office] for the period [insert date range of treatment/counseling]. We have determined that these records do not exist. We will now make a decision based on the evidence of record.</i></p> <p>A final notification letter is not necessary in these circumstances.</p>
<p>Final Notification Letter for Federal Records (Social Security Administration) Slide 43 M21-1 III.iii.3.A.2.e</p>	<p>While not indicated as an exemption in M21-1 III.iii.1.C.1.e, it is important that note that final notification letters are not always necessary when VA is unable to obtain medical records from SSA.</p> <p>If SSA responds to VA’s request for medical records through the SSA-GSO website and states that the records were destroyed or not located after exhaustive searches, then send a final notification letter. However, if SSA states that there are no medical records, then a final notification letter is not necessary.</p>
<p>Final Notification Letter for Federal Records (Fire-related records) Slide 43 Handout pg 12 M21-1 III.iii.2.E.1.g</p>	<p>If the federal records are fire-related, the claims processor must prepare and send a final notification letter to a claimant after</p> <ul style="list-style-type: none"> • the claimant returns a completed NA Form 13075 or the claims folder contains information sufficient to substitute for the form • VA uses information from the form to submit a PIES request under request code <ul style="list-style-type: none"> • S02-V (if the corresponding claim is being processed in VBMS), or • S02 (if the corresponding claim is not being processed in VBMS), and • NPRC provides a negative response to the request. <p>Note: A final notification letter is NOT required if VA does not receive enough information to request reconstruction of the records from either NA Form 13055 or NA Form 13075.</p>
<p>Military Records Specialist and Fire-related Records Slide 44 Handout pg 12</p>	<p>For fire-related records, a formal finding should be completed by the Military Records Specialist (MRS) when</p> <ul style="list-style-type: none"> • an original or certified copy of a discharge document cannot be obtained • a negative response from NPRC has been received, or a request could not be submitted

<p><u>M21-1 III.iii.2.I.5.b,</u> <u>M21-1 III.iii.2.E.1.h,</u> and <u>M21-1</u> <u>III.iii.2.E.1.i</u></p>	<ul style="list-style-type: none"> • the Veterans Information Solution and VA/Department of Defense Identity Repository do not contain service information • service information cannot be verified from alternate sources • a final notification letter has been sent to the claimant (if applicable), and • the evidence the claimant has submitted is not a certified document. <p>When a formal finding is required, the MRS should document on VA Form 21-0961</p> <ul style="list-style-type: none"> • all attempts to verify service • the evidence containing military service information that is being considered, and • a decision on whether the evidence will be accepted as verification of service in absence of other official documentation. <p><i>Note:</i> A second signature is not required on the formal finding.</p>
<p><i>Routing the case to rate</i> <i>Slide 45</i> <i>Handout 12</i></p>	<p>Route the case to the rating activity for final rating action when</p> <ul style="list-style-type: none"> • the final notification letter has been sent, or • when a formal finding is complete <p>There is no longer a response period provided in the final notification letter. Therefore, the claim can be sent to the rating activity as soon as all other development actions are complete.</p>